APPEAL NO. 031466
FILED JULY 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 7, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth quarter, January 30 through April 30, 2003. The claimant appealed, arguing that the determination of nonentitlement is against the great weight of the evidence. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rule 130.102(d)(4). It was undisputed that the claimant sustained a compensable injury on _____; that he had an impairment rating of 15% or greater; and that he has not commuted any portion of his impairment income benefits. The claimant based his request for entitlement to SIBs for the fourth quarter on the assertion that he had a total inability to work.

The claimant alleges that the hearing officer did not correctly apply Rule 130.102(d)(4) and that her determination is contradictory because she noted in her Statement of the Evidence that, in her opinion, the "claimant likely is unable to engage in any type of employment." Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The Appeals Panel has repeatedly encouraged hearing officers to make specific findings of fact addressing the elements of Rule 130.102(d)(4). Texas Workers' Compensation Commission Appeal No. 991973, decided October 25, 1999, and Texas Workers' Compensation Commission Appeal No. 001153, decided June 30, 2000.

The hearing officer noted in her Statement of the Evidence that the claimant's treating doctor essentially recites the claimant's symptoms only without specifically explaining how the injury causes the alleged total inability to work. The hearing officer was not persuaded that the claimant provided a narrative sufficient to meet the requirements of Rule 130.102(d)(4). Although the hearing officer makes no specific reference to Rule 130.102(d)(4), she does make a finding that during the qualifying period of the fourth quarter, the claimant was not totally unable to perform any type of

work in any capacity. The evidence sufficiently supports the hearing officer's determination that, during the qualifying period for the fourth quarter, the claimant was not totally unable to perform any type of work in any capacity, and thus, did not make a good faith effort to obtain employment commensurate with his ability. A review of the record does not indicate that the hearing officer improperly applied the applicable rule.

Whether a claimant is entitled to SIBs based on having no ability to work is a factual determination for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The claimant contends that the hearing officer's actions indicated that she was "favorable to the carrier." The hearing officer's decision and the CCH record do not reflect any prejudice or bias on the part of the hearing officer. The claimant asserts that the hearing officer and the carrier's representative had a friendly conversation prior to the CCH. If such a conversation occurred, the claimant gives no indication that it had anything to do with matters relating to the CCH. Thus, there is no basis for reversal of the hearing officer's decision based on that assertion.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FEDERATED MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSS LARSEN
860 WEST AIRPORT FREEWAY, SUITE 500
HURST, TEXAS 76054.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Veronica Lopez-Ruberto
Appeals Judge

_____
Robert W. Potts
Appeals Judge